

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA : CRIMINAL NO. 1:05cr00045
:
:
v. : **PLEA AGREEMENT**
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:
MITCHELL R. GRAHAM :

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It is hereby agreed between MITCHELL R. GRAHAM, individually and through his attorney, Richard W. Smith-Monahan, and the United States, by counsel as follows:

1a. MITCHELL R. GRAHAM will enter a plea of guilty to Count 1 of the Information charging him with willfully aiding and assisting in, and procuring, counseling, and advising the preparation and presentation, to the Internal Revenue Service, of a United States Nonresident Alien Income Tax Return, Form 1040NR, of ADT Intern'l for the calendar year 1999 which was fraudulent and false as to a material matter, in violation of Title 26, United States Code, Section 7206(2). Conviction on Count 1 carries a maximum penalty of 3 years imprisonment, a fine of \$250,000 plus the costs of prosecution, a one year term of supervised release, and a \$100.00 special assessment.

1b. In return for said plea, once accepted by the Court and not withdrawn, and after the imposition of sentence, the government agrees to withdraw MITCHELL R. GRAHAM as a named

defendant under Count One of the Indictment at Criminal no. 1:05cr00045, Southern District of Ohio, Western Division, without prejudice to its reinstatement if, at any time, MITCHELL R. GRAHAM is permitted to withdraw his plea of guilty. In that event, MITCHELL R. GRAHAM waives any double jeopardy, statute of limitations, speedy trial, or similar objections to the reinstatement of him as a named defendant in Count 1 of the Indictment.

2. By pleading guilty, the defendant knowingly and voluntarily:

a. stipulates to and admits the truth and accuracy in every respect of the Statement of Facts attached to this Plea Agreement and incorporated by reference herein. The defendant agrees that had the matter proceeded to trial, the United States would have proved each fact in the Statement of Facts beyond a reasonable doubt;

b. stipulates and admits that had this matter proceeded to trial, the United States would have proved each element of the crime to which the defendant pleads guilty beyond a reasonable doubt; and

c. consents to the judge determining by a preponderance of any reliable evidence including hearsay, all aspects of the defendant's sentence.

3. a. The defendant understands that the Court may utilize the Sentencing Guidelines as advice in determining a reasonable

and appropriate sentence, along with the other factors enumerated in 18 U.S.C. § 3553(a).

b. The parties stipulate, agree and recommend to the Court that the following sentencing calculation applies to this case. First, that the 2000 edition of the Sentencing Guidelines (incorporating amendments effective November 1, 2000) would apply because the defendant's role in the offense of conviction was completed no later than October, 2001. Second, that the application of the sentencing guidelines would result in a base offense level of 16 due to the amount of tax loss being in excess of \$200,000 and not more than \$325,000. See USSG §§ 2T1.4 and 2T4.1.

c. Prior to sentencing, the government will, orally or in writing, recommend that the court reduce the offense level by three levels for acceptance of responsibility provided that the defendant:

- (1) Voluntarily, truthfully, and timely provided complete information to authorities concerning his own involvement in the offense, and;
- (2) Timely manifested acceptance of responsibility.

See USSG §3E1.1.

d. The government agrees to seek no additional upward adjustments, and the defendant agrees to seek no additional downward adjustments.

4. At the time of sentencing, if his cooperation has been completed, or within one year of the imposition of sentence, the

government will review the timeliness, nature, extent, completeness, accuracy, and truthfulness of the assistance and testimony of the defendant. If the government determines the defendant has provided substantial assistance in the investigation or prosecution of other persons, the government may, in its discretion, file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines [and 18 U.S.C. §3553(e)] or under Rule 35(b), Federal Rules of Criminal Procedure, advising the District Court of the assistance to law enforcement authorities. The defendant has no right to compel, require or expect that the government will file such a motion, however, and the decision to reduce the sentence of the defendant below the applicable guideline range or any mandatory minimum sentence is solely in the discretion of the District Court.

5. The defendant understands that the Probation Department will conduct a pre-sentence investigation and will recommend to the Court a Sentencing Guideline range. The defendant understands that the Probation Department's recommendations are not binding on the Court and the terms of this Plea Agreement are not binding upon the Court or Probation Department. The defendant understands that if the Court does not follow the recommendations contained in this Plea Agreement, he does not have the right to withdraw his plea of guilty. If this Plea Agreement or the defendant's conviction upon his guilty plea is voided for any reason, the defendant waives any statute of

limitations with respect to the United States prosecuting him for any offense arising from his conduct in this case.

6. The defendant understands that there is no agreement concerning his ultimate sentence. The defendant could receive the maximum penalty provided by law.

7. There is no agreement concerning the defendant's civil tax liability and the defendant understands that the Internal Revenue Service will assess any additional tax due and owing along with any fines, interest and penalties independently from this plea agreement.

8. The defendant agrees that as a condition of this Plea Agreement, and as a condition of any term of probation or supervised release imposed, he will give complete cooperation to federal, state, and local tax authorities in the determination of his taxable income and determination and payment of any applicable tax, interest, and penalties, including any fraud penalty. The defendant agrees as part of his complete cooperation to file accurate tax returns for himself, amending returns if necessary, within 120 days of entering his guilty plea. The defendant agrees, if requested by the United States, to submit a joint application with the United States to the Court for an order authorizing the United States to disclose under Rule 6(e), Fed.R.Crim.P., to federal, state, and local tax authorities and to parties in any civil litigation against the defendant, any documents that are arguably matters occurring before the grand jury which are pertinent to the defendant's liability and

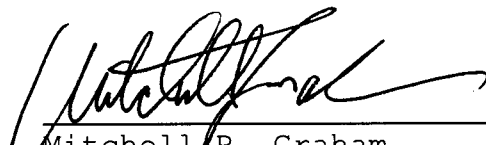
obligation to pay any tax, interest, and penalties or to pay any damages and other amounts in the civil litigation.

9. The defendant agrees to pay the \$100.00 special assessment to the Clerk of the United States District Court no later than the date set by the Court for the final pre-sentence report and provide proof of payment to the U.S. Attorney's Office on the date of payment.

10. This is the entire Plea Agreement. There are no other provisions or understandings.

DATE:

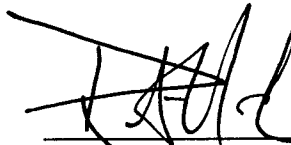
3/21/2008



Mitchell R. Graham
Defendant

DATE:

3/21/08




Richard W. Smith-Monahan
Attorney for Defendant

GREGORY G. LOCKHART
United States Attorney

DATE:

March 27, 2008



Thomas G. Voracek
Trial Attorney
U.S. Department of Justice
Tax Division

ATTACHMENT: STATEMENT OF FACTS - Mitchell R. Graham

The United States and defendant Mitchell R. Graham stipulate and agree that, had this case proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt. The United States and the Defendant also stipulate and agree that the following facts do not encompass all of the evidence that would have been presented had this case proceeded to trial.

On or about May 29, 1997, Mitchell R. Graham formally began participating in the trust promotion scheme established by The Aegis Company ("Aegis") when he became a member of the Aegis organization by signing a team agreement.

The Aegis system consisted of a network of promoters, salesmen, managers, lawyers, and return preparers who worked for Aegis to sell and implement trust products as a means to fraudulently reduce the taxes of their clients. Specifically, the system designed by Aegis consisted of assisting clients in the establishment of a series of domestic, charitable, and foreign trusts. Clients' assets, including personal residences, were placed in these trusts. In addition, bank accounts were opened in the names of these trust entities. In each of the Aegis systems, the clients always retained effective use, management, and control of the funds purportedly placed in the various trusts and bank accounts established through the Aegis system.

Mitchell R. Graham had knowledge that the Aegis system was illegal. In particular, he was aware of IRS Notice 97-24, which carefully detailed the government's position that trust systems, including Aegis, were considered abusive and illegal.

Prior to October 2000, Mitchell R. Graham met with and counseled David Tolliver with regard to Tolliver's purchase and implementation of the Aegis trust system. Graham advised Tolliver on how the system worked, the use of trusts, and income tax return preparation. One of the trusts purportedly established for Tolliver as part of the Aegis system was ADT International ("ADT"). ADT purportedly had a business address in Belize. ADT had no legitimate business purpose and was set up as an entity solely to conceal Tolliver's income from the United States.

Under the Aegis system, Tolliver was directed to make payments to various trust entities, including ADT. These payments would be taken as deductions on Tolliver's federal

individual and trust income tax returns. These deductions were false as they were not legitimate business expenses. As a result of reporting these false deductions, Tolliver fraudulently reduced his federal individual income taxes due and owing. ADT was established in Belize so that it, arguably, was a foreign entity not required to pay United States federal income taxes.

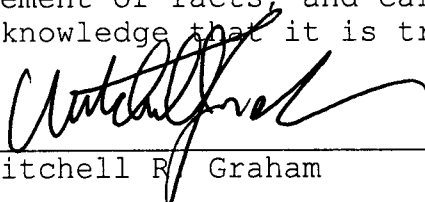
On or about October 14, 2000, Mitchell R. Graham, within the Southern District of Ohio, did willfully aid and assist in, and procure, counsel, and advise in the preparation and presentation to the Internal Revenue Service, of a United States Nonresident Alien Income Tax Return, Form 1040 NR, for ADT International for the calendar year 1999. He signed the return as the preparer under the penalties of perjury. Mitchell Graham filed the return with the Internal Revenue Service. The return was false and fictitious as to a material matter in that ADT International was a fictitious entity solely established to conceal Tolliver's income from the United States.

The acts described above were done willfully and knowingly and with the specific intent to violate the law, and not by accident, mistake, inadvertence, or other innocent reason.

This Statement of Facts does not contain each and every fact known to the defendant and to the United States concerning the defendant's and others' involvement in the charges set forth in the plea agreement, and is set forth for the limited purpose of establishing a factual basis for the defendant's guilty plea.

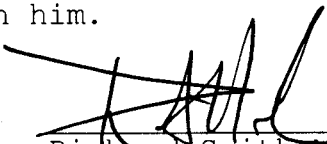
I have read this statement of facts, and carefully reviewed it with my attorney. I acknowledge that it is true and correct.

3/21/2008
Date


Mitchell R. Graham

I am Mr. Graham's attorney. I have carefully reviewed the statement of facts with him.

3/21/08
Date


Richard Smith-Monahan, Esq.